

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 049 of 2025
[In the High Court at Suva Case No. HBC 312 of 2024]

BETWEEN : **PRANEET PANDE, NATASHNI DEVI KUMAR and PRADEEP PANDE** all of Lot 22 Dadakulaci Road, Nadawa, Nasinu, Company Manager, ICT Supervisor and General Manager respectively **TOGETHER WITH THEIR FAMILY, DEPENDENTS, AGENTS, SERVANTS AND/OR INVITEES WHO ARE NOT KNOWN TO THE PLAINTIFF PRESENTLY OCCUPYING THE PROPERTY.**

Appellant
(Original Defendant)

AND : **HOME FINANCE COMPANY PTE LIMITED** trading as **HFC BANK** a limited liability company having its registered office at 371 Victoria Parade, Suva, Fiji.

Respondent
(Original Plaintiff)

Coram : **Prematilaka, RJA**

Counsel : **Mr. B. Ram for the Appellant**
Ms. P. Verma for the Respondent

Date of Hearing : **05 March 2026**

Date of Ruling : **10 March 2026**

RULING

[1] Following the appellants' appeal against the Ruling of the High Court¹ *inter alia* directing them to deliver possession of the land including the house thereon, they filed summons to stay the said Ruling pending the determination of the appeal. Earlier the High Court on 05 August 2025 had refused the appellants' summons for stay pending appeal². Thus, this is their renewed application for stay of proceedings.

Stay of proceedings

[2] The matters that should be considered by this Court in an application for stay pending appeal are discussed in **Natural Waters of Viti Ltd –v- Crystal Clear Mineral Water (Fiji) Ltd**³. It is of course not always necessary to consider all seven matters⁴ adverted to in *Natural Waters* as their relevance will often depend upon the nature of the proceedings and the orders made by the court below⁵. A stay should not be granted unless the Court is satisfied that there are good reasons for doing so. Whether there are good reasons established will be determined by reference to the principles set out by this Court in the *Natural Waters*⁶.

[3] In the case of money judgments, generally a successful litigant should not be deprived of the fruits of successful litigation by withholding funds to which he is otherwise entitled, pending an appeal. For this Court to interfere with that right the onus is on the appellant to establish that there are sufficient grounds to show that a stay should be granted. Two factors that are mostly taken into account of course among others by court are (1) whether the appeal will be rendered nugatory if the stay is not granted and (2) whether the balance of convenience and the competing rights of the parties point to the granting of a stay⁷. The power to grant a stay

¹ **Home Finance Company Pte Ltd v Pande** [2025] FJHC 302; HBC 312 of 2024 (23 May 2025)

² **Home Finance Co Pte Ltd (trading as HFC Bank) v Pande** [2025] FJHC 485; HBC312.2024 (8 August 2025)

³ [2005] FJCA 13; ABU 11 of 2004 [18 March 2005]

⁴ (a) Whether, if no stay is granted, the applicant's right of appeal will be rendered nugatory (this is not determinative), (b) whether the successful party will be injuriously affected by the stay (c) the bona fides of the applicants as to the prosecution of the appeal (d) the effect on third parties (e) the novelty and importance of questions involved (f) The public interest in the proceeding and (g) The overall balance of convenience and the *status quo*.

⁵ See for example **Singh v Singh** [2019] FJCA 165; ABU 49 of 2018 (16 August 2019); **Prasad v Sagayam** [2019] FJCA 15; ABU82.2018 (22 February 2019)

⁶ *Singh v Singh* (supra); **Neo (Fiji) Ltd v Ausmech Services (Australia) Ltd** [2019] FJCA 174; ABU39.2018 (11 September 2019)

⁷ **Newworld Ltd v Vanualevu Hardware (Fiji) Ltd** [2015] FJCA 172; ABU76.2015 (17 December 2015)

conferred by section 20 of the Court of Appeal Act gives the court a wide discretion to grant a stay when the interests of justice so requires⁸.

- [4] This Court is required to consider the *bona fides* of the appellant in the prosecution of the appeal (which is often taken to be a reference to the chances of the appeal succeeding⁹) and whether the appeal involves a novel question of some importance. However, at the same time the authorities suggest that the merits of the appeal will rarely be considered in any detail. It is usually sufficient if an appellant has an arguable case. If the appeal is obviously without merit and has been filed merely to delay enforcement of the judgment then the application for stay should be refused¹⁰.
- [5] It should be noted at the outset that this is not an appeal against a money judgment. Nor is it an appeal against a judgment concerning a commercial property upon which a business is being actively carried on. Even for money judgments, since the decision of this Court in Attorney-General of Fiji and Ministry of Health v Dre [2011] FJCA 11; Misc. 13 of 2010 (17 February 2011), the ability of the appellant to recover the judgment amount in the event a stay is not granted is not decisive and is only one of a number of factors that must be considered¹¹.
- [6] In my view the most relevant considerations in this matter are (a) whether, if a stay is not granted, the applicant's right of appeal will be rendered nugatory (this being not determinative), (b) whether the respondent will be injuriously affected by the stay, (c) the bona fides of the appellant as to the prosecution of the appeal *i.e.* the prospect of success in the appeal and (g) the overall balance of convenience. The rest of the '*Natural Waters*' consideration are of less significance or relevant in this matter.
- [7] The appellants ("Original Defendants") on 28 November 2017 accepted a loan of \$324,942.25 from the respondent, repayable over 348 months with monthly instalments of \$1,325.89 for

⁸ Gallagher v Newham [2003] FJCA 18; ABU0030.2000S (16 May 2003)

⁹ Neo (Fiji) Ltd v Ausmech Services (Australia) Ltd [2019] FJCA 174; ABU39.2018 (11 September 2019)

¹⁰ Newworld Ltd v Vanualevu Hardware (Fiji) Ltd (*supra*)

¹¹ Neo (Fiji) Ltd v Ausmech Services (Australia) Ltd (*supra*)

the first 12 months and \$1,752.15 thereafter, subject to a variable interest rate. They secured this loan by executing Mortgage No. 857643 on 10 January 2018, which was registered on 01 February 2018. The appellants fell into arrears which was due under the mortgage as at 10 November 2023 was \$17,682.00 being 255 days in arrears as per the Demand Notice issued under section 77 of the Property Law Act 1971 ("PLA") for payment within 30 days. According to the notice of demand the total loan outstanding as at 10/11/2023 was \$283,124.59 including outstanding balance and accrued interest. The appellants failed to pay. They were informed of the respondent's intention sell the property to recover the debt without further notice. The appellants failed to honor their obligations. They were issued with notice to deliver vacant possession. The appellants failed to vacate. The respondent initiated the High Court proceedings by originating summons.

[8] Order 88 of the High Court Rules provides as follows:

“1.–(1) This Order applies to any action (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being an action in which there is a claim for any of the following reliefs, namely–

(a) payment of moneys secured by the mortgage[;]

(b) sale of the mortgaged property[;]

(c) foreclosure[;]

(d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property[;]

(e) redemption[;]

(f) reconveyance of the property or its release from the security[;]

(g) delivery of possession by the mortgagee.

(2) In this Order, “mortgage” includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) An action to which this Order applies is referred to in this Order as a mortgage action.

(4) These Rules apply to mortgage actions subject to the following provisions by this Order.”

[9] The appellant argues in favor of a stay order mainly on three grounds. They are as follows:

- (i) *Arrears claimed by the respondent are incorrect and unsubstantiated.*
- (ii) *Demand Notice dated 16 November 2023 is defective.*
- (iii) *The respondent has failed to properly account for repeated changes in repayment amounts, despite the appellants' consistent engagement and efforts to clarify the figures.*

[10] Arrears claimed by the respondent are incorrect and unsubstantiated - The main plank of this assertion is that the respondent has increased the monthly repayment sum from time to time. However, it appears from the documents issued by the respondents and countersigned by the appellants or the 01st appellant on behalf of the other two, that the monthly installment which was \$1752.15 per month since the expiry of the first 12 months (see letter of offer dated 28/11/2017) increased to \$1937.01 per month. The term of the loan too got extended on 26/02/2019 to 444 months from 348 months by the Extension of Term & Restructure of Account letter. As per the letter dated 26 March 2020, the total loan balance stood at \$240,167.76 as admitted by all appellants. This letter also granted 03 months holiday repayment to the appellants. There was another extension of repayment accepted by the appellants on 27 July 2020 for 03 months due to COVID 19 as hardship assistance but the monthly repayments would commence on 30 September 2020 at \$1830.94 for 425 months. The total balance was \$247,211.15. Finally, a third extension of COVID 19 hardship assistance for 02 months & account restructure had taken place with the concurrence of all appellants according to which the total loan balance as at 24 May 2021 stood at \$265,145.22 and the monthly repayment got increased to \$2,024.33. As per the letter dated 24 May 2021 whereby these changes were accepted by the appellants, repayment would commence on 31 July 2021.

[11] The appellants had admitted on 09 December 2024 that they were in default of the loan account to the tune of \$38,000.00 and committed to repayment in four installments. Their letter followed their solicitors' request for the amount due and payable from the respondent's solicitors who on 10 December 2024 requested the appellants' solicitors that the arrears of \$38,739.73 should be settled on that day or before 12 noon on 13 December 2024 and also clear the full mortgage debt within 60 days. Though, appellants' solicitors on 11 December

2024 explored the possibility of two other options including refinancing the loan, the respondent's solicitors insisted on settling arrears and clearing whole debt as informed earlier.

[12] In the circumstances, I am not persuaded that there is a serious dispute raised by the appellants in the High Court or in this court as to the variations to the loan agreement or resulting changes that occurred regarding the total debt, monthly installments and the period of repayment. If the appellants' counsel had thought that these issues needed to be tested in court through witnesses giving evidence he could have moved the High Court to act in terms of O.5, r.4 (2)(b) read with O.28, r.9 (1) of the High Court Rules to have the originating summons converted to writ of summons.

[13] Demand Notice dated 16 November 2023 was defective. The contention here is that the demand notice was not served on the 2nd and 3rd appellants. The trial judge had addressed his mind to this and I have very little to add to his conclusion:

'[6] The affidavit of service provides that it was served on all and accepted by the 1st Defendant. This issue is not part of the affidavit of the 1st Defendant. He was duly authorized by the other Defendants to depose his affidavit. I do not find this an issue as none was averred in the 1st Defendants affidavit.'

[14] I also find that on 11 December 2024 the 01st appellant had been authorized to speak on behalf of the other two appellants and swear affidavits, giving evidence and generally represent them in the High Court. Therefore, the 01st appellant had every right to aver the alleged fact of non-service in his opposing affidavit in the High Court, which he failed to do.

[15] The appellants also state that the demand notice is defective because it does not reflect \$8900.00 paid to the respondent. However, the respondent insists that it did not receive such a payment as the cheque for that amount was dishonored. Neither is this payment supported by any documentary evidence including the 01st appellant's affidavits. Nor was it taken up in the High Court.

- [16] The respondent has failed to properly account for repeated changes in repayment amounts, despite the appellants' consistent engagement and efforts to clarify the figures – I have already addressed this in detail and there is no need for repetition.
- [17] The appellants state that if no stay is granted their appeal will be rendered nugatory. This consideration does not exist in a vacuum. It has to be considered in the context of the totality of the case. The appellants submit that enforcement, including execution for vacant possessions, would result in the permanent loss of the appellants' family home.
- [18] However, the 01st appellant has said (supported by a letter of confirmation of offer to purchase the mortgage property for \$395,000.00 by a prospective buyer dated 20 May 2025) in his initial affidavit, that he undertook to repay the entire sum of the loan upon settlement of the mortgaged property and his solicitors were working on preparing the necessary legal documents. Yet, to date this has not materialized. On the other hand, it shows that the appellants were prepared to part with the property without preserving it.
- [19] Further, there was nothing to prevent the appellants from exercising their statutory right of redemption. A mortgagor is entitled to redeem the mortgaged property at any time before the same has been actually sold by the mortgagee under his power of sale, on payment of all monies due and owing under the mortgage at the time of payment¹². This court granted a temporary stay until the hearing of the summons for stay the judgment on 04 September 2025 upon the appellants depositing a sum of \$30,000.00. The appellants do not appear to have used the 06 months window so provided by this court to safeguard their property through redemption, any arrangement for refinancing though adverted to by the appellants in December 2025 or in any other manner.
- [20] I am also not satisfied of the the *bona fides* of the appellant in the prosecution of the appeal. Nor do I think high of their chances of the appeal succeeding on the grounds set out in the Notice of Appeal coupled with the fact that there are no novel and important questions

¹² **Nadolo v Chand** [2025] FJSC 27; CBV0008.2024 (30 October 2025); **Khan v Fiji Development Bank** [2000] FJLawRp 17; [2000] 1 FLR 11 (14 January 2000)

involved. Thus, I am not inclined to consider this consideration in favor of the appellants (which is not determinative anyway).

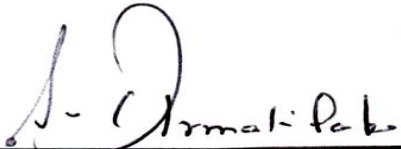
[21] As for the injury that could be caused to the successful party by a stay of the judgment and execution thereof, it has been averred by the respondent that it is losing money the longer enforcement of decision is delayed since interest continues to accrue, arrears are increasing and there are risks associated with deterioration of property and depletion of value. Further, there is a further risk that eventual recovery may not fully satisfy the debt and the ongoing interest on the defaulted loan continues to accrue together with legal and administrative expenses. In my mind, these are all legitimate concerns despite the fact that the loan is securely protected by the registered mortgage.

[22] The other elements *i.e.* the effect on third parties and the public interest are non-existent. Considering what I discussed above, I am convinced that the overall balance of connivance does not favor the appellants.

Orders of the Court:

1. *The summons for stay of the High Court Ruling dated 23 May 2025 is refused.*
2. *The appellants are directed to pay \$2500.00 as costs to the respondent within 21 days hereof.*




Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Benjamin Ram Lawyers for the Appellant
Mitchell Keil Lawyers for the Respondent